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ELECTIONS TO FILL VACANCIES IN PRINCIPAL ORGANS: ELECTION OF FIVE MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE

SECURITY COUNCIL
Forty-eighth year

Memorandum by the Secretary-General

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I. INTRODUCTION

1. On 5 February 1994, the terms of office of the following five members of the International Court of Justice will expire:

Mr. Shigeru Oda (Japan)
Mr. Ni Zhengyu (China)
Mr. Jens Evensen (Norway)
Mr. Bola A. Ajibola (Nigeria)
Mr. Géza Herczegh (Hungary)

It is therefore necessary for the General Assembly and the Security Council, during the forty-eighth session of the Assembly, to elect five judges for a term of office of nine years, beginning on 6 February 1994.

2. The Secretary-General requested nominations from the national groups of States parties to the Statute of the Court by 31 August 1993. The nominations received by that date and the curricula vitae of the candidates are contained in separate documents submitted to the General Assembly and to the Security Council (A/48/433-S/26490 and A/48/440-S/26497). Furthermore, the list of candidates will appear on the ballot papers distributed during the elections. The object of this memorandum is to set out the present composition of the International Court of Justice and to describe the procedure in the Assembly and the Security Council with regard to the election.

II. COMPOSITION OF THE INTERNATIONAL COURT OF JUSTICE

3. The present composition of the International Court of Justice is as follows:

President: Sir Robert Yewdall Jennings (United Kingdom of Great Britain and Northern Ireland)***

Vice President: Shigeru Oda (Japan)*

Judges: Roberto Ago (Italy)**
Stephen M. Schwebel (United States of America)**
Mohammed Bedjaoui (Algeria)**
Ni Zhengyu (China)*
Jens Evensen (Norway)*
Nikolai K. Tarassov (Russian Federation)**
Gilbert Guillaume (France)***
Mohamed Shahabuddeen (Guyana)**
Andrés Aguilar Mawdsley (Venezuela)***
Christopher G. Weeramantry (Sri Lanka)***
Raymond Ranjeva (Madagascar)***

Bola A. Ajibola (Nigeria)*
Géza Herczegh (Hungary)*

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* Term of office expires on 5 February 1994.

** Term of office expires on 5 February 1997.

*** Term of office expires on 5 February 2000.

III. PROCEDURE IN THE GENERAL ASSEMBLY AND IN THE SECURITY COUNCIL

4. The election will take place in accordance with the following:

(a) The Statute of the Court, in particular Articles 2 to 4 and 7 to 12;

(b) Rules 150 and 151 of the rules of procedure of the General Assembly;

(c) Rules 40 and 61 of the provisional rules of procedure of the Security Council.

5. In accordance with General Assembly resolution 264 (III) of 8 October 1948, Nauru and Switzerland, which are parties to the Statute of the Court, but not Members of the United Nations, will participate in the General Assembly in electing members of the Court in the same manner as the States Members of the United Nations.

6. On the date of the election, the General Assembly and the Security Council will proceed, independently of one another, to elect five members of the Court to fill the vacancy (Article 8 of the Statute).

7. According to Article 2 of the Statute, judges are to be elected, regardless of their nationality, from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law. Article 9 requires electors to bear in mind not only that the person to be elected should individually possess the qualifications required, but also that, in the body as a whole, the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

8. Those candidates who obtain an absolute majority of votes both in the General Assembly and in the Security Council will be considered as elected (Article 10, paragraph 1, of the Statute).

9. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors whether or not they vote or are allowed to vote. The electors in the General Assembly are all the Member States (184), together with the two non-member States, mentioned in paragraph 5 above, which are parties to the Statute of the Court. Accordingly,

94 votes constitute an absolute majority in the Assembly for the purpose of the present Court election.

10. In the Security Council, eight votes constitute an absolute majority and no distinction is made between permanent and non-permanent members of the Council (Article 10, paragraph 2, of the Statute).

11. Only those candidates whose names appear on the ballot papers are eligible for election. The electors in the General Assembly and in the Security Council will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote for not more than five candidates on the first ballot and, on subsequent ballots, if any, for five less the number of candidates who have already obtained absolute majorities.

12. At the 915th plenary meeting of the General Assembly, on 16 November 1960, a procedural discussion took place as to whether rule 94 (then rule 96) of the rules of procedure of the Assembly should be applied in elections to the International Court of Justice. That rule lays down a procedure for restricted ballots in the event that, after the first ballot, the requisite number of candidates have not obtained the required majority. By 47 votes to 27, with 25 abstentions, the Assembly decided that the rule did not apply to elections to the Court and it proceeded to elect the requisite number of candidates by a series of unrestricted ballots. This decision has been followed consistently.

13. If, in the first ballot in either the General Assembly or the Security Council, the number of candidates obtaining an absolute majority is less than five, a second ballot will be held and balloting will continue in the same meeting until five candidates have obtained the required majority (rule 151 of the rules of procedure of the Assembly and rule 61 of the provisional rules of procedure of the Council).

14. Cases have arisen in the Security Council in which more than the required number of candidates have obtained an absolute majority on the same ballot. The practice followed by the Council has been to hold a new vote on all the candidates, and the President of the Council made no notification to the President of the General Assembly until only the required number of candidates, and no more, had obtained an absolute majority in the Council.

15. Only when five candidates have obtained the required majority in one of the organs will the President of that organ notify the President of the other organ of the names of the five candidates. The President of the latter should not communicate such names to the members of that organ until that organ has itself given five candidates the required majority of votes.

16. If, upon comparison of the respective lists of names that have obtained an absolute majority in the General Assembly and in the Security Council, fewer than five candidates have been thus elected pursuant to paragraph 8 above, the Assembly and the Council will proceed, again independently of one another, in a second meeting and, if necessary, a third meeting, to elect candidates by further ballots for seats remaining vacant (Article 11 of the Statute), the results again being compared after the required number of candidates have obtained an absolute majority in each organ.

17. If, however, after the third meeting, one or more seats still remain unfilled, the General Assembly and the Security Council may at any time, at the request of either organ, form a joint conference consisting of six members, three appointed by each organ. This joint conference may, by an absolute majority, agree upon one name for each seat still vacant and submit the name or names for the respective acceptance of the Assembly and the Council. If the joint conference is unanimously agreed, it may submit the name of a person not included in the list of nominations, provided that that candidate fulfils the required conditions (Article 12, paragraph 2 of the Statute).

18. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected will, within a period to be fixed by the Security Council, proceed to fill the vacant seat or seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council. In the event of an equality of votes among the judges, the eldest judge will have a casting vote (Article 12, paragraphs 3 and 4, of the Statute).